

No. 05-60 9 SEP 13 2005

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In The
Supreme Court of the United States

JOSEPH VERSHISH,
Petitioner,
v.

**UNITED STATES OF AMERICA;
UNITED STATES PAROLE COMMISSION;
UNITED STATES MARSHAL SERVICE,
FOR THE WESTERN DISTRICT OF TENNESSEE,**
Respondents.

**On Petition For A Writ Of Certiorari
To The United States Court of
Appeals For The Sixth Circuit**

PETITION FOR A WRIT OF CERTIORARI
with Appendix

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QUESTION PRESENTED

Whether the Court of Appeals erred in ruling that the Parole Commission retained jurisdiction to proceed with its parole revocation charges found within the supplemental warrant filed on January 12, 2000, even though the petitioner's parole term had expired prior to the date the supplemental warrant was filed.

Alternatively, did the Court of Appeals error in denying Petitioner's request to be granted jail credit against his original sentence from the time of his arrest until the time of his release on bond as set forth in Thompson v. Crabtree.

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STATUTES

18 U.S.C. §4213 2, 7

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18 U.S.C. §4210 1, 9, 10, 12

28 CFR 2.48-06(a)(1) 2, 11

28 CFR 2.48-06(a)(2)(A) 2, 5, 6, 11, 12, 14

OPINION BELOW

The Sixth Circuit Court of Appeals selected its opinion for full-text publication in the Federal Reporter. The decision is reported at _____.

JURISDICTION

The Sixth Circuit filed its decision on May 2, 2005, and entered an order denying petitioner's motion for rehearing on June 15, 2005. This Court has jurisdiction under 28 U.S.C. §1254(1) to review the circuit court's decision on a writ of certiorari.

STATUTORY PROVISION INVOLVED

18 U.S.C. §4210:

- (a) A parolee shall remain in the legal custody and under the control of the Attorney General until the expiration of the maximum term or terms for which such parolee was sentenced.
- (b) Except as otherwise provided in this section the jurisdiction of the Commission over the parolee shall terminate no later than the date of the expiration of the maximum term or terms for which he was sentenced...
- (c) In the case of any parolee found to have intentionally refused or failed to respond

to any reasonable request, order, summons, or warrant of the Commission or any member or agent thereof, the jurisdiction of the Commission may be extended for the period during which the parolee so refused or failed to respond.

28 CFR 2.48-06(a)(1) provides:

In the case of an absconder, violations that occurred after the normal expiration of supervision may be included on the supplemental warrant application. (See paragraph (a)(2)(A) below).

28 CFR 2.48-06(a)(2)(A) provides:

(2)(A) Violations of parole occurring after the normal expiration of supervision may be added to an outstanding warrant if the parolee is an absconder from supervision from whom a timely warrant has been issued. The supplemental warrant application should be issued as soon after the parolee's arrest as possible. If the absconding charge cannot be sustained at the revocation hearing, such supplemental charges may not be used to revoke parole or forfeit street time.

STATEMENT OF FACTS

Petitioner Vershish was sentenced on February 28, 1986, in the United States District Court for the Southern District of Florida to thirty-five years confinement for conviction on eight counts relating to the imposition, possession, and distribution of methaqualone. The Florida district court later amended the sentence to impose a total term of nine years. On September 13, 1990, Vershish was paroled, and was to remain under parole supervision until July 18, 1994. On March 30, 1992, the United States Parole Commission issued a parole violator warrant for Vershish's arrest charging him with several technical parole violations including absconding. The warrant instructed the U.S. Marshall to assume custody as soon as possible. On April 9, 1999, Vershish was arrested pursuant to a facsimile copy of the March 30, 1992 parole violator warrant. Vershish was never accorded a revocation hearing after his arrest pursuant to the parole violator warrant. Vershish remained in custody from the time of his arrest on April 9, 1999 until January 26, 2004, when he was released on an appeal bond.

Seventeen days after his arrest, Vershish was charged with being a convicted felon in possession of a firearm and having more than five pieces of false identification. Vershish subsequently plead guilty to these charges and on November 24, 1999 was sentenced to a term of eighty-seven months imprisonment. Although the

U.S. Marshall had executed a facsimile copy of the Commission's original warrant, the Commission, nonetheless, lodged the original warrant as a detainer. On January 12, 2000, the United States Parole Commission issued a supplemental warrant charging the new conviction that Vershish was sentenced for on November 24, 1999.¹ The supplemental warrant did not re-allege any of the non-criminal conduct originally included within the original parole violator warrant. This supplemental warrant was also lodged as a detainer against Vershish, pending completion of his new sentence.

On January 12, 2000, Vershish informed the United States Parole Commission of the execution of its original warrant and sought a revocation hearing. However, relying on its records from the Marshal's Service, the Commission erroneously believed that the March 1992 warrant had not

¹ It should be noted that the supplemental warrant filed on January 12, 2000, only alleged one violation of law, specifically, that on November 23, 1999, the parolee was convicted in the Western District of Tennessee for the offense of Felon in Possession of a Firearm and Possession with Intent to Use Five or more false identification documents. However, the November 23, 1999 conviction was vacated on March 14, 2003 pursuant to order granting defendant's petition for post conviction relief pursuant to 28 U.S.C. §2255. While it is true that Vershish subsequently entered a plea of guilty to the charges outlined in the supplemental warrant, that plea occurred after the expiration of Vershish's parole term, under any analysis by the court.

been executed but rather lodged as a detainer. It therefore treated Vershish's request as one for a dispositional review of the detainer. In early 2003, Vershish wrote the Commission inquiring about the review of his detainers. The Commission conducted a review and ordered that the detainers would stand. Thereafter, Vershish filed a petition for writ of habeas corpus alleging that he was prejudiced by the Commission's failure to accord him a revocation hearing after he was arrested pursuant to the Commission's warrant. After the District Court denied Vershish's requested relief, the matter was appealed to the Sixth Circuit Court of Appeals.

The Sixth Circuit Court of Appeals concluded that since the original warrant was executed, the Commission could not simply withdraw it and place it as a detainer, but instead was required to accord Petitioner a revocation hearing. The Petitioner does not take exception to this portion of the Sixth Circuit's opinion. However, the Sixth Circuit Court of Appeals further ruled that although the Commission did not accord the Petitioner a revocation hearing, the Petitioner is not entitled to credit against his original sentence for the entire time he spent in custody after the execution of the parole violator warrant. The Court concluded that the Commission retained jurisdiction to proceed with its parole revocation charges since the Petitioner's parole term did not expire, but rather was tolled upon the issuance of the January 12, 2000, supplemental

warrant. It is this portion of the opinion that the Petitioner submits is error and directly inconsistent with CFR 2.48-06(a)(2)(A) as well as other circuit court decisions.

REASON FOR GRANTING THE PETITION

THE PETITIONER'S WRIT OF HABEAS CORPUS SHOULD HAVE BEEN GRANTED AND THE PETITIONER SHOULD HAVE RECEIVED FULL JAIL CREDIT FROM THE TIME OF THE EXECUTION OF THE WARRANT UNTIL HIS ULTIMATE RELEASE ON BOND AS DICTATED BY JURISPRUDENCE FROM OTHER DISTRICTS.

Petitioner, Vershish submits that the Sixth Circuit Court of Appeals reliance upon the supplemental warrant which was filed after the expiration of the Petitioner's original parole term was error and directly inconsistent with jurisprudence in both the ninth and tenth circuits, due to the fact that in the case at bar, there could not be a formal finding that the Petitioner absconded by the parole commission as mandated by 28 CFR 2.48-06(a)(2)(A) due to their failure to hold a timely revocation hearing upon execution of the original warrant.

It is undisputed that Vershish's original parole term was set to expire on July 18, 1994. It is further undisputed that the supplemental warrant filed on January 12, 2000, was filed after the expiration of Vershish's original parole term. As such, in order for the Parole Commission to be able to proceed pursuant to the supplemental warrant filed

on January 12, 2000, their jurisdiction over Vershish would need to have been extended.

In its opinion, the Sixth Circuit Court of Appeals relying upon Barrier v. Beaver, 712 F.2d 231, 236-37 (6th Cir. 1983), concluding that Vershish's parole term resumed to run when the March 1992 warrant was executed and his parole term was subsequently tolled again upon the issuance of the January 12, 2000 supplemental warrant. It is this reading of Barrier that the Petitioner submits is misplaced.

In Barrier, the Sixth Circuit Court of Appeals found that the parole commission was authorized to issue parole violation warrants pursuant to 18 U.S.C. §4213. (Id. at 235) Section 4213 provides in pertinent part that –

- (b) Any summons or warrant issued under this section shall be issued by the Commission as soon as practicable after discovery of the alleged violation, except when delay is deemed necessary. Imprisonment in an institution shall not be deemed grounds for delay of such issuance, except that, in the case of any parole charged with a criminal offense, issuance of the summons or warrant may be suspended pending disposition of charge.

This section is implemented by 28 C.F.R. §2.44, which regulation reads:

- (b) Any summons or warrant under this section shall be issued as soon as practicable after the alleged violation is reported to the Commission, except when delay is deemed necessary. Issuance of a summons or warrant may be withheld until the frequency or seriousness of violations, in the opinion of the Commission, requires such issuance. In the case of any parolee charged with a criminal offense, issuance of a summons or warrant may be withheld, or a warrant may be issued and held in abeyance pending disposition of the charge.
- (c) A summons or warrant may be issued only with the prisoner's maximum term ...
- (d) The issuance of a warrant under this section operates to bar the expiration of the parolee's sentence. Such warrant maintains the Commissions' jurisdiction to retake the parolee either before or after the normal expiration date of the sentence and to reach a final decision as to the revocation of parole and forfeiture of time pursuant to §2.52(c).